93-414

No. _____

Supreme Court, U.S.
FILED
SEP 13 1993
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

RICHARD W. BRAHM, Petitioner

v.

ARLOU E. BRAHM, Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE
SECOND DISTRICT COURT OF APPEAL
LAKELAND, FLORIDA

RICHARD W. BRAHM
Petitioner, ProSe
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PREFACE

This Petition is prepared Pro Se by the Petitioner, who is not an attorney. It is based upon the premise that the United States Supreme Court is constituted to protect the rights of its citizens, as well as its corporate entities, as such rights are set forth and guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

The issues presented are of extreme importance to millions of citizens throughout America who are involved in "No-Fault" Divorce and affected by subsequent Distribution of Property made without just cause or 'fault' claimed or proven by the Petitioner to the Divorce.

The issues provide the basis for this Petition for Writ of Certiorari and the Petitioner's Appeal.

QUESTIONS

1. TAKING OF VESTED PROPERTY WITHOUT JUST CAUSE.

In "No-Fault" Dissolution of Marriage/Distribution of Property, when just cause or "fault" is not claimed or proven and Dissolution/Distribution is opposed by the other party, can a state in behalf of the petitioning party take vested property from the other without denying that party's constitutional right to 'equal protection' and 'due process of law'? (28 U.S.C. #2403-b may apply)

2. TAKING OF VESTED PROPERTY WITHOUT NOTICE OR OPPORTUNITY TO BE HEARD.

In an action for "No-Fault" Dissolution of Marriage/Distribution of Property, can a state court take vested property directly from a valid, closely held "C" corporation and award the property to a party to the marriage who is not equitably or legally involved in the corporation, when the corporation was not a party to the action nor represented to defend the action, without denying the corporation its constitutional right to 'due process of law'?

3. TAKING OF VESTED PROPERTY WITHOUT PENALTY FOR BREACH OF CONTRACT.

Where marriage is presently and legally held as "a civil contract with all of the attributes of pure contract", and "No-Fault"

Dissolution of Marriage law is created with a subsequent "Equitable Distribution" Statute 61.075, can the state take vested property from its owner, the Respondent in the Dissolution action, and under its statute award substantial property to the Petitioner when the statute does not include nor allow a rule to assess a pecuniary penalty in lieu of compensatory damages against a party breaching contract without claim or proof of just cause or 'fault', when the breach is opposed by the innocent, non-breaching party, without violating that party's constitutional right to 'due process' or 'equal protection of law'? (28 U.S.C. #2403-b may apply)

4. TAKING OF VESTED PROPERTY WITHOUT FINDING ACCORDING TO STATUTE.

In a state where its "Equitable Distribution" statute 61.075 specifies that: "any distribution of marital assets or liabilities shall be supported by factual findings in the judgment or order based on competent substantial evidence with reference to the factors enumerated in subsection (1)" and where no such finding was made in the Final Judgment, can that court take vested property from one party to the "No-Fault" Dissolution/Distribution action and award to the other, without denying the other party's constitutional right to 'equal protection' or 'due process of law'?

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

RICHARD W. BRAHM, Petitioner

v.

ARLOU E. BRAHM, Respondent

The Petitioner, **RICHARD W. BRAHM**, respectfully prays that a Writ of Certiorari issue to review the Order and Final Judgment of the Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida, and the Denial of the Petitioner's Appeal to the Second District Court of Appeal, Lakeland, Florida, and Denial of Petitioner's Motion for Re-Hearing, Clarification and Written Opinion.

OPINIONS BELOW

The Order of the Second District Court of Appeals, Lakeland, Florida, denying the Petitioner's Motion for Re-Hearing, Clarification and Written Opinion dated June 17, 1933. Unpublished and reprinted in appendix.

The Denial "Per Curium" of the Petitioner's Appeal from the Final Judgment of the Circuit Court of the Twentieth Judicial Circuit in and for Collier County Florida, dated May 5, 1933. Unpublished and reprinted in appendix.

The Final Judgment of the Circuit Court for the Twentieth Judicial Circuit in and for Collier County, Florida, dated April 27, 1992. Unpublished and pertinent excepts reprinted in the appendix.

JURISDICTION

Questions and issues involving the Fifth and Fourteenth Amendments to the United States Constitution were raised by the Petitioner at Hearings Pre- and Post-Trial and at Trial, and within the Appeal timely filed, and oral argument heard before the Second District Court of Appeal, Lakeland, Florida. The "Per Curium" affirmation by the Court of Appeal and Denial of Re-Hearing automatically denied further recourse to discretionary review by the Florida Supreme Court, leaving the federal questions presented solely to the Supreme Court of the United States.

This Court has sole jurisdiction to consider the federal questions presented.

CONSTITUTIONAL PROVISIONS

The Petitioner's questions are all based upon construction of the 'due process' and 'equal protection' guarantees of the Fifth and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

The parties were formerly husband and wife.

The Petitioner (former husband) was Respondent in a Petition for Dissolution of Marriage/Distribution of Property filed initially by the former wife in September, 1990, and subsequently re-filed in March, 1991, naming the Petitioner individually and as Trustee in the Petition.

Prior to notice of a pending divorce and without warning while the husband was receiving emergency medical treatment at Naples Community Hospital, the former wife, upon the advice of the attorney, removed a personal, locked file cabinet of the former husband which contained his personal and corporate financial information, to which by pre-marriage agreement the former wife had not been privy, broke into it, as directed by her attorney, and copied the financial information for use at the trial. The former wife then moved out of the husband's home and filed the original Petition for Dissolution/Distribution on September 13, 1990.

Various Motions were filed by the former husband and heard in the Circuit Court. One Motion for Dismissing the Petition on grounds of coming to Court of equity with "Unclean

Hands" based upon the wrongful conversion and break-in to the personal, locked file cabinet was dismissed by Judge Carlton describing the action as "dirty pool" but considering it as "fault" rather than "deceit" as the Court could have gotten the information through disclosure by court order: i.e., the end justifies the means. The former husband's Motions for Summary Judgment declaring the Florida Statute 61.075 "Unconstitutional" for failing to assess a pecuniary penalty in distribution of property consistent with compensatory damages assessed in contract or common law, and unique to Florida's position on marriage being a "civil contract with all of the attributes of pure contract" were also denied.

Trial was held in March, 1992, Circuit Judge Charles T. Carlton presiding, and Final Judgment, written by the opposing counsel, signed by the Court on April 27, 1992. The Final Judgment did not provide "factual findings supported by competent substantial evidence" as mandated by Florida statute 61.075. The Judgment also awarded property of a valid "C" corporation, Independent Radio Network, Inc., which was not named as a party to the petition nor represented per se.

Notice of Appeal was filed with the Second

Court of Appeal, Lakeland, Florida, and briefs filed by the former Husband and counsel for the former wife. Oral argument was heard in March, 1993, at which time the former husband again presented his 'Constitutional' questions as well as other questions of law and fact. At that Hearing, the 3-Judge Court did not ask any questions of the former husband's argument nor dispute his contentions. However, on May 11, 1993, the Appeal was DENIED "Per Curium", without answer to any of the fourteen substantive questions asked.

The Petitioner's Motion for Re-Hearing, Clarification and Written Opinion was denied on June 17, 1993. The Petitioner's Motion for Discretionary Review by the Florida Supreme Court was automatically precluded by Florida Court Rule that makes a "Per Curium" affirmation of Final Judgment a final determination within the state.

WHERE FEDERAL QUESTIONS WERE RAISED

The Record shows that the questions concerning 'due process' and 'equal protection of law' were raised by the former husband (Petitioner herein) on several occasions at Hearings before the Trial Court and in the Appeal brief and oral argument.

The first Hearing, Circuit Judge Ted Brousseau presiding, consisted of a Motion

for Summary Judgment to declare Statute 61.075 "Unconstitutional" in part for failing to include or allow a pecuniary penalty in property distribution related to "No-Fault" Divorce, when the Divorce and Distribution is opposed by the non-breaching party to the marriage contract.

In the Record, Judge Brousseau, although supportive of the notion from a standpoint of Equity, denied the Motion without prejudice and suggested that it be raised at Trial.

The Motion was again presented at Trial and again at the Post-Trial Hearing in which Distribution of the former husband's vested properties was made. Judge Charles T. Carlton, who heard the Motion, responded on the Record with a statement: "Well, Mr. Brahm's argument is good law". He then went on to blame the Florida Supreme Court for "dreaming up this equitable distribution thing". However, he also denied the Motion for Summary Judgment to declare Statute 61.075 "Unconstitutional" in part.

The Final Judgment, signed on April 27, 1993, was appealed by the former husband; and within the appeal, the question of the Constitutionality of Statute 61.075 was raised along with the question of 'due process of law' being denied by the Final Judgment taking

property directly from the Independent Radio Network, Inc., a Delaware corporation, founded in 1968 by the former husband, which was not named a party to the Petition nor represented. To affirm this kind of ruling validates any incursions into the separate nature of all closely held corporations.

The question of whether a state Trial Court can award vested property under the state's "Equitable Distribution" statute 61.075 without providing in its final Judgment a finding supported by competent substantial evidence, as is mandated by statute, suggests a clear denial of 'due process of law'. Does the discretionary power of a Trial Court exceed the mandate of the controlling statute which demands a property finding supported by competent substantial evidence with reference to factors enumerated within the statute?

One would ask why an Appellate Court would not respond to substantive questions of law and fact that claimed substantive Trial Court errors and challenged the constitutionality of certain practice and parts of Statute 61.075.

Millions of Americans each year are affected by the social disease of divorce. Since "No-Fault" divorce was initiated by most states the national divorce rate has increased by

20%. In contested cases, to award vested property to a petitioner without just cause or 'fault' claimed or proven, in most cases encourages divorce, in many cases creates "unjust enrichment", and in all cases denies 'due process' and 'equal protection of law'.

The federal questions, along with the other substantive questions of law and fact, were ignored by Second District Court of Appeal in its "Per Curium" decision and denial of Re-Hearing from which this Petition for Writ of Certiorari is sought.

The federal questions are in need of answer with reasoned judicial opinion from the Court in order to protect the Petitioner and other individual and corporate constitutional rights, for which this Court is constituted.

REASONS FOR GRANTING WRIT
PUBLIC IMPORTANCE

The reasons for granting this Writ are contained within the questions which raise issues of extreme importance to the Petitioner, as well as to thousands of Americans contemplating or in the process of "No-Fault" Divorce and subsequent distribution of property, made without claim of just cause or fault.

The federal question which claims that the Florida Trial Court took vested property from the Petitioner and awarded it to the

former wife who petitioned and received "No-Fault" Dissolution of Marriage and subsequent vested property of the Petitioner, without claiming or proving just cause or 'fault', is a contradiction to all of the most basic principles of common law and therefore is a denial of 'due process of law' and/or 'equal protection of law'.

Also, the companion question that claims the Florida Statute 61.075 is "Unconstitutional" in part for failing to set forth or in practice, to allow a rule to assess a pecuniary penalty in lieu of compensatory damages against the party breaching the marriage contract unique to Florida, without claim or proof of just cause or fault, when opposed by the innocent, non-breaching party is also contrary to fundamental principles of common or contract law which demands compensatory damages for such breach. This, too, is a denial of 'due process of law'.

Furthermore, the question of whether a state Court can directly take the vested property of a valid closely held "C" corporation, which was not a party to the action, nor notified that its assets were at risk, nor represented per se to defend itself, asks whether such action by the Court is an acceptable expedient to bypass 'due process of law'

which demands service and opportunity to be heard. Of what value is the separate and distinct character of a corporation when its individuality is bypassed and its assets taken without proper service and opportunity to be heard? In the instant case, the corporate character of the Independent Radio Network, Inc., was ignored by the Trial Court in its Final Judgment and its assets directly divested along with the vested assets of the Petitioner.

ARGUMENT

The case before this Court, although unique in some aspects, is common to thousands of men and women in America who have [redacted] been victims of "no-Fault" Divorce and subsequent divestiture of property without just cause claimed or proven.

In the state of Florida, "No-Fault" Divorce was created by the legislature at the behest of the Courts:

> Linda v Linda 352 So 2d 1208
> "The no-fault divorce law was enacted to rid the court system of emotional and financial blackmail made possible by the continuing threat of mental torture by way of embarrassing harassment through public washing of dirty linen"

It is surprising that a law concerning divorce and family breakup was never put to a public referendum but seemingly was enacted

for the convenience of the courts, obviously tired of listening to torrid tales and anxious to get through their heavy case load. Prior to the "No-Fault" law, however, the 'dirty linen' or whatever the 'fault' claimed or proven was a major factor in a property award. Not so today. Property may be taken and awarded without need to claim just cause or fault, under its 1980 court-conceived "Equitable Distribution" Statute 61.075.

Gardner v Gardner 452 So 2d 480
"Equitable Distribution" in Florida is a court-evolved concept"

In Florida, marriage has long been held to be a contract:

Ponder v Graham 4 Fla 23
"a civil contract, with all of the attributes of pure contract"

Ryan v Ryan 277 So 2d 270, 273
This Court said as early as Ponder v Graham 4 Fla 23 in 1851 that marriage is a contract. We have consistently since that time referred to 'marriage contracts' for over 120 years of Florida jurisprudence. As recently as Belcher v Belcher 271 So 2D 7, we referred to the obligation of a husband to support his wife during continuation of the marriage contract, thus still holding our view of marriage to be a contract rather than a mere relationship as suggested in Gleason v Gleason 26 NY 2d 28"

16 Am Jur 2d, Const. Law 435

". . . the obligation of a contract is defined as the law or duty which binds the parties to perform their agreement. Thus, the obligation of a contract is the means provided by law for the enforcement of it and persists in its binding force upon the party who makes it. It consists in the effective force of the law which applies to and compels performance of the contract or compensatory equivalent in way of damages for its non-performance"

Whereas Ryan rationalizes the "Constitutionality" of the state creating "No-Fault" Divorce and justifies the breach of the marriage contract without just cause or 'fault' based upon the state being a party to the contract, it does not touch upon the subsequent distribution of property, particularly vested property, affected by the breach made without claim of just cause. Nor, in the "Equitable Distribution" statute 61.075, created subsequently to interface with "No-Fault" divorce, does it include or in practice allow that a pecuniary penalty in lieu of compensatory damages be assessed against the party breaching the marriage contract without claim or proof of just cause or 'fault' when opposed by the innocent, non-breaching party. Failure to have such a rule contradicts all of the established principles of contract or common law

concerning property. Taking of vested property without just cause claimed or proven denies 'due process' and 'equal protection of law'.

> Wissner v Wissner 201 P2d 831
> "A denial of due process of law results from any statute, whether state or federal, which takes away any of the essential attributes of private property"
>
> Zachas v Hult 25 SE 2d 806
> "The protective principles, summed up in the due process of law clauses, extend to every proceeding which may deprive a person of life, liberty and property, whether the process be judicial or administrative or executive in its nature"

In divorce, this question was first raised by Mr. Justice Field of the United States Supreme Court over 100 years ago:

> Maynard v Hill 125 U.S. 190
> "If the act of the divorce should attempt to interfere with the rights to vested property of either party, a different question would be presented"

In the instant case, the Petitioner's vested property was so vested equitably, in that he alone earned or inherited it, and legally in that he solely controlled it by virtue of a pre-marriage agreement which, although verbal, was carried out throughout the marriage and undisputed at the Trial.

The Trial Court ignored the caveat of Mr. Justice Field and awarded the vested property without claim or proof of just cause. In the Transcript of the Post-Trial Hearing in which this Petitioner Moved for Summary Judgment Declaring the Statute 61.075 to be "Unconstitutional" in part for failing to include a penalty against a party breaching the marriage contract unique to Florida without just cause when the breach was opposed by the innocent, non-breaching party, Circuit Judge Charles T. Carlton responded:

> "Well, I think Mr. Brahm's argument is good law. When I started practicing law 30 years ago I think that was the state of the law. Marriage was considered to be much more formal, and then times changed. We had then in the early 70's legislature adopted no-fault law, which as far as I know, successfully survived challenges as to its constitutionality. In the early 80's we had the canaveras (Canakaris) case. This is a nice piece of judicial legislation. It didn't come from the legislature; it came from the Florida Supreme Court. They're the ones that made this law, and later on this was adopted in the Florida Statute. But the Supreme Court is the one that thought up this equitable distribution thing, which I understand they review from other states. I can't imagine the Supreme Court dreaming up a law and then saying it's constitutional. That's what I'm telling you. That's the bottom line."

The Petitioner herein responded as follows in trying to separate the issues of the constitutionality of "No-Fault" divorce from the ~~taking~~ of vested property without just cause or fault being claimed or proven:

> "Your Honor, I don't think that the Supreme Court addressed . . I'm not contesting the right of the state, because a state is a party to the marriage contract, and if the state makes it, it can break it and it did. I am contesting the fact that when you tie in property distribution, and this is exactly what (U.S. Supreme Court) Mr. Justice Field was talking about. Without following - when Mr. Justice field made his decision in this thing, fault was the basis for getting a divorce, and fault had a big bearing on equitable distribution. Now, with No-Fault, they abandoned the idea, both in divorce and distribution, and in doing it in distribution, it raises the question that he raised - Mr. Justice Field, in his original decision - in saying that a 'different question' is presented when property is involved. And, that is the question that the Supreme Court, Ryan v Ryan, did not address at all. It skirted that. It was talking about the marriage contract".

Judge Carlton's response was as follows:

> "I have heard enough of this thing. I have been up here on the bench for 22 years and in the legal profession for 30 years. I appreciate your layman's opinion, but I have

to rely on my own judgment, too. What I'm going to do: You have your Notice of Appeal and you can file it as soon - I'm going to go ahead at this time; so you may want to take notes when I go over this vast estate that you didn't see fit to have a lawyer, which is strange".

Judge Carlton then went on to award to the former wife the vested assets of the former husband, including the assets of the Delaware "C" Corporation, Independent Radio Network, Inc., which was not a party to the petition nor represented per se to contest such distribution before the distribution occurred. Judge Carlton stated as follows:

". . . the IRN (corporation) assets are considered to be marital. The wife will be entitled to have the condo (IRN) valued at $116,000; and the other IRN investments will be split".

In making this award and ignoring the separate character of the corporation, which was not served nor given notice that it was to be divested of its vested property at any state of the proceeding, the Court denied 'due process' of law to the corporation.

Nichols v Nichols 598 So 2d 851

"Trial Court erred in ordering distribution of corporation property in dissolution proceeding where corporation was not a party to the proceeding"

Florida Statute 61.075 in essence states that 'marital assets' and liabilities include the assets and liabilities incurred during the marriage, regardless of whether those assets were vested equitably or legally as in the instant case. Florida Statute 61.075, in an attempt to preclude capricious and arbitrary Final Judgment apropos of property states:

> "(b) In any contested dissolution action wherein stipulation and agreement has not been entered and filed, any distribution of marital assets or liabilities shall be supported by factual findings in the judgment or order based on competent substantial evidence with reference to the factors enumerated in subsection (1)

Subsection (1) states, among other factors:

> (a) the contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker.
>
> (b) The contribution of each spouse to the acquisition, enhancement and production of income or the improvement of, or the incurring of liabilities to both the marital assets and the non-marital assets of the parties.

The Record at Trial and other proceedings

shows that the former wife, with no children of the marriage but with two children of her own by prior marriage, contributed minimally to the marriage and provided nothing whatsoever to the "acquisition, enhancement and production of income", or improvement of the "marital" and "non-marital" assets which were either earned solely or inherited by the Petitioner herein.

However, with the Record as documented showing no basis for a factual finding "based on competent substantial evidence with reference to the factors enumerated", the Trial Court apparently ignored the mandate of the statute and its finding was thus:

> "The Court has considered the assets of the parties and their acquisition, contribution and disposition by and between the parties during the marriage and separation of the parties"

Without being able to make a finding that could be supported by competent substantial evidence, as mandated by the Statute, the Judge, obviously annoyed by the former husband's pro se questioning of the Statute's constitutionality, at the Post-Trial Hearing on April 15, 1993, made an arbitrary ward that was not consistent with the equities demanded by the statute, but seemingly was

consistent with present practice within the system.

That it proved 'safe' was indicated by the "Per Curium" affirmation of the Final Judgment by the Second District Court of Appeal which ignored the 14 substantive questions of law and fact that were presented within the Petitioner's Brief and at the oral argument. They included the federal questions asked of this Court.

Why did the Second District Court of Appeal rule "Per Curium", without answering any or all of the 14 questions which were vital to the Appeal: Did it, like the Trial Court, seemingly resent the pro se, non-lawyer appearance of the Petitioner questioning the constitutionality of the comfortable court-created system of taking and awarding property without need to find just cause? It knew, of course, that its "Per Curium" ruling would preclude any further appellate review within the state.

These questions have not been answered by the Florida Trial Court, the Second District Court of Appeal, or by prior statute or related case law. The answers are vital to the fulfillment of the guarantees of the Fifth and Fourteenth Amendments to the Petitioner and thousands of other Americans whose rights

to vested property are, or may be, in jeopardy from the system or practice within states having "No-Fault" divorce laws and also award vested property of individuals without just cause claimed or proven, or disregard the separate nature of a closely-held "C" corporation.

SUMMARY

The District Court of Appeal's "Per Curium" ruling and denial of re-hearing left to this Court the federal questions and the issues presented herein: Does the courts' present practice of taking vested property without just cause in "No-Fault" divorce deny "due process" or "equal protection of law"? Can Trial Court take and award vested property of a corporation which was never a party to the action? Does Florida statute 61.075 "Equitable Distribution" deny 'due process' or 'equal protection of law', in light of the contractual status of marriage in Florida, by failing to assess a severe pecuniary penalty against the party breaching the marriage contract without just cause or fault, when opposed by the non-breaching party? Does a Final Judgment which does not obey the statutory mandate that requires a finding that is supported by competent substantial evidence deny 'due process of law'?

It is axiomatic that a state retain jurisdiction over all rights of its citizens except those specified within the United States Constitution and its Amendments. A state may take vested property for itself without just cause in taxation, condemnation and matters of public interest; it may not take vested property from one party and give to another without just cause, without denying 'equal protection of law' to the first party. For a court to reward a Petitioner in "No-Fault" divorce with vested property of another without penalty is to let a referee trip a linebacker and call no penalty after the runner scores.

A system which departs from fundamental principles of law to serve expediency, serves neither law nor equity.

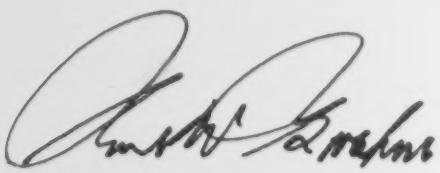
> Fla Jur 2d 10
> "It is the duty of the Court to strike down a statute or ordinance which is found to be in positive conflict with some provisions of organic law, irrespective of the wisdom of such legislation and the consequences of the determination. Thus there rests upon the Courts the affirmative duty of refusing to sustain that which by the Constitution has been declared repugnant to public policy, and of supporting, protecting and defending the Constitution by giving the effect to the provisions of the Constitution, even if in so doing, a statute is held to be inoperative"

This Petition asks that, after examining the Record, if this Court so finds the present statute and the system itself to be in 'positive conflict with some provisions of organic law', that it reverse and remand the case for a new trial under guidelines that it finds to be constitutionally correct.

CONCLUSION

For the foregoing reasons and resolution of issues which are important to the Petitioner and thousands of Americans who are or may be deprived of their constitutional rights to vested property without just cause in "No-Fault" divorce, the Petitioner prays that this Petition for Writ of Certiorari be ordered.

Respectfully submitted this 10th day of September, 1993.



RICHARD W. BRAHM
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Octobr Term, 1993

RICHARD W. BRAHM
Petitioner

v

ARLOU E. BRAHM
Respondent

A P P E N D I X

RICHARD W. BRAHM
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579 - 7th Avenue, No.
Naples, FL 33940
(813) 649-0488

IN THE SECOND DISTRICT COURT OF APPEAL
LAKELAND, FLORIDA

June 16, 1993

RICHARD W. BRAHM, Appellant (s) v ARLOU E. BRAHM Appellee (s)	)	Case No. 92-01632

BY ORDER OF THE COURT

Appellant, pro se, having filed a motion for rehearing and/or clarification in the above-styled case; upon consideration, it is

ORDERED that the motion is hereby denied.

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER

WILLIAM A. HADDAD, CLERK

c: Mr. Richard W. Brahm
Cathy S. Reiman, Esq.
Lawrence A. Farese, Esq.

NOT FINAL UTIL TIME EXIRES TO FILE REHEARING MOTION AND IF FILED, DETERMINATION

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

RICHARD W. BRAHM, and RICHARD W. BRAHM, Trustee Appellant/ Cross/Appellee v ARLOU E. BRAHM Appellee/ Cross/Appellant	)	Case No 92-01632

Opinion Filed May 5, 1993

Appeal from the Circuit Court for Collier County, Charles T. Carlton, Judge

Richard W. Brahm, Pro Se
Appellant/Cross Appellee

Lawrence A. Farese and Cathy S. Reiman, Esquires of Cummings & Lockwood, Naples, for
Appellee/Cross Appellant

PER CURIUM:

Affirmed:

DANAHY, A.C.J. and PARKER and BLUE, JJ; Concur.

	IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA
ARLOU E. BRAHM Petitioner vs RICHARD W. BRAHM, and RICHARD W. BRAHM, Trustee Respondent	Case No. 91-0786-CA-01 FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE (Excerpts Pertinent to Petition)

THIS CAUSE, having come before this court and this Court having heard testimony of the parties and their witnesses, and argument of counsel, finds as follows:

4. . The court has considered the assets of the parties and their acquisition, contribution and disposition by and between the parties during the marriage and separation of the parties

5. Husband contends Florida Statute 61.075 is unconstitutional because, as a marriage contract, the non-breaching party is denied due process and equal protection of the law. The court considers this issue to have been previously decided by the State of Florida, by both case law and statutory law and finds the statute to be constitutionally sound.

9. It is ORDERED and ADJUDGED:

1. The marriage is dissolved

2. The Husband's Motion for Summary Judgment is denied.

3. The Husband's Motion to Dismiss, based on Unclean Hands, is denied.

4. Each party will retain their separate assets as delineated in Exhibit A.

5. The marital assets shall be divided as delineated in the Exhibit A Asset List, (proposed distribution attached hereto and incorporated herein.)

DONE and ORDERED in chambers at Naples, Collier County, Florida, this 27th day of April, 1992.

CHARLES T. CARLTON
Circuit Court Judge

EXHIBIT A

(Excerpts Pertinent to Petition)

IRN ASSETS
(Independent Radio Network, Inc.)
U.S. 1014753

		PROPOSED DISTRIBUTION HUSBAND	WIFE
IRN	1335 Solana Road (Villa)		$116,588
IRN	Republic Bank	$ 6,820	6,820
IRN	Citibank	8,981	8,981
IRN	Barnett Bank	18,887	18,887
IRN	Barnett-checking	1,642	1,642
IRN	Bowery Bank	3,289	3,289
IRN	Dean-Witter (VISA)	2,456	2,456
IRN	USAA Mutual Funds	68,191	68,191
IRN	USAA Mutual Funds	35,409	35,409
IRN	Municipal Bonds	152,500	152,500
IRN	Typewriter	000,225	000,225
IRN	Sub-Totals	$ 298,400	$ 414,989